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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Reexamination of the Comparative )  
Standards for Noncommercial )  
Educational Applicants )  
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)

MM Docket No. 95-31

**Reply Comments of the National Association of Broadcasters**

The National Association of Broadcasters ("NAB")<sup>1</sup> submits these reply comments in response to the above-captioned *Further Notice of Proposed Rule Making* ("Further Notice").<sup>2</sup> In the *Further Notice*, the Commission faces the difficult task of determining a process by which it may choose between non-commercial educational ("NCE") applicants vying to use the same broadcast frequency. The Commission must also decide how it will choose among applicants when an NCE station applies for a channel in the non-reserved/commercial band.

The Commission proposes several options for selecting the winner among competing applicants if an NCE applicant applies for a commercial channel. The options are: (1) requiring NCE applicants to participate in auctions; (2) allowing additional circumstances where NCE stations can request reallocation of commercial frequencies to non-commercial status; (3) prohibiting NCE stations from applying for non-reserved allocations; (4) establishing a "Special NCE Processing Track"; or (5) adopting a hybrid approach.

<sup>1</sup> NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

<sup>2</sup> *Further Notice of Proposed Rule Making* in MM Docket No. 95-31, \_\_\_ FCC Rcd \_\_\_ (1998).

National Public Radio (“NPR”), the Association of America’s Public Television Stations (“APTS”) and the Corporation for Public Broadcasting (“CPB”) jointly request that the Commission adopt the Special NCE Processing Track where one or more of the applicants is an NCE applicant.<sup>3</sup> This approach would automatically deem a non-reserved channel as reserved for NCE use, once an NCE applicant files a technically acceptable application. Alternatively, they believe the Commission should allow NCE applicants to reserve additional spectrum and adopt a hybrid point system approach.<sup>4</sup>

NAB opposes the adoption of the Special NCE Processing Track as initially proposed by APTS,<sup>5</sup> and now proposed by the Commission in the *Further Notice*. Granted, the Commission has a difficult row to hoe in deciding how it may decide between mutually exclusive applications for non-reserved channels in which one may be for an NCE station. However, this *Further Notice* to reexamine the comparative standards of NCE applicants is not the appropriate place for the Commission to propose a de facto overhaul of its allocation and assignment rules.

The Commission already has reserved a significant portion of the spectrum for NCE use. Additionally, NCE stations are allowed to apply for non-reserved allocations in limited circumstances. If an NCE applicant chooses to apply for a non-reserved channel, under existing rules, that NCE applicant, we believe, must play by the same allocation rules as if it were a

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<sup>3</sup> See Joint Comments of National Public Radio, Inc., the Association of America’s Public Television Stations and the Corporation for Public Broadcasting, MM Docket No. 95-31, filed January 28, 1999, at 38.

<sup>4</sup> *Id.* at 39.

<sup>5</sup> APTS originally proposed this as an option in the Auctions Proceeding. See Comments of APTS in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, filed January 26, 1998.

commercial station.<sup>6</sup> Applications for FM stations can only be filed for stations at the communities and on the channels contained the Table of Allotments in Section 73.202.<sup>7</sup> An applicant must file a petition for rulemaking to amend the table and add channels. The same procedure exists for TV station applications.<sup>8</sup> The proposed Special NCE Processing Track is an attempt to drastically change a set of Commission regulations.

As proposed by APTS et al., NCE stations would have the ability to *reallocate* channels to noncommercial use and freeze out any commercial applicants merely by applying for the channel. Then, if there were mutually exclusive NCE applicants for the newly “reserved” allocation, the prevailing NCE applicant would be chosen through the mutually exclusive reserved band procedures that are adopted. It is a proposal designed to avoid auctions for NCE applicants, but places commercial applicants at a great disadvantage. For example, the Commission does not “dereserve” a noncommercial TV channel without substituting another reserved channel;<sup>9</sup> thus, maintaining the same number of reserved and nonreserved channels in a given community. The NCE Special Processing Track would take this one step further, by eliminating any opportunity for commercial applicants once an NCE application is filed for any non-reserved frequency.

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<sup>6</sup> See *Southwest Educational Media Foundation of Texas, Inc.*, 8 FCC Rcd 1681 (1993) at ¶ 7. “Although SEMFOT proposes a noncommercial educational station, it specified a non-reserved frequency. Thus, SEMFOT was subject to the requirements of 47 C.F.R. Secs. 73.201 through 73.213. See 47 C.F.R. Sec. 73.513.”

<sup>7</sup> 47 C.F.R. § 73.203(a) (1997).

<sup>8</sup> 47 C.F.R. § 73.607 and § 73.622(a) (1997).


<sup>9</sup> See *Deletion of Noncommercial Reservation of Channel \*16*, 11 FCC Rcd 11700 (1996) at ¶ 18.

The *Further Notice* was issued to determine the best procedure in which to choose between applicants, not as a vehicle to change the established NCE allocation and assignment rules. Even if the APTS, NPR and CBP believe this is the best option to resolve the issue of mutual exclusivity in the commercial band where NCE stations are applicants, there are substantive rules and equity issues that arise. These issues must be addressed, but are not addressed within the scope of this proceeding.

The Commission must reject the proposed Special NCE Processing Track as an option to deciding how to choose between mutually exclusive applications for non-reserved channels where an NCE station is an applicant.

Respectfully submitted,

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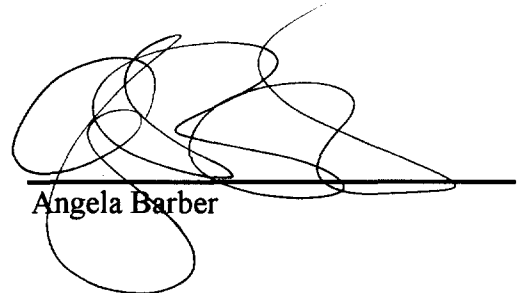
## **CERTIFICATE OF SERVICE**

I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Reply Comments of the National Association of Broadcasters was sent on the 15th day of March, 1999, by first-class mail, postage prepaid, to the following:

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